IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 573 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH CHHANABHAI PATEL

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 573 of 2004

MR KJ SHETHNA for Petitioner No. 1

MR PRADIP D BHATE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 19/10/2004

ORAL JUDGEMENT

1. Heard learned Counsel Mr.K.J.Shethna for petitioner and learned APP Mr. Pradip D. Bhate for the

respondent State. Record and Proceedings of the Trail Court was called for and received by this Court. In addition to this, Investigating Officer Mr.D.P. Bhrambhatt, the then PSI of Bilimore Police Station, was present, to assist the learned APP, with all relevant papers.

2. The matter was heard finally upon the request of learned counsels for the parties because the papers are available.

3. The present petitioner Ramesh Chhanabhai Patel, vide Exh.1 in Sessions Case No.50 of 1998, of Additional Sessions Judge, Valsad, preferred an Application to discharge him from the offences punishable under Sections 147, 148, 149,307, 427 and 120-B of the Indian Penal Code and under Sections 3, 4 and 6 of the Explosive Substance Act, 1908. Learned Additional Sessions Judge was pleased to reject the Application for discharge filed by the petitioner, vide his order dated 13th of August, 2004. Originally, there were two submissions before the Trial Court that, firstly, there was no prima facie material against the present petitioner to proceed further and that without obtaining consent of the District Magistrate under Section-7 of the Explosive Substance Act, 1908, no cognizance can be taken by the court. So far as the second contention is concerned, that is waived in this Revision Application by this petitioner, and main thrust is upon whether there is prima facie case against the petitioner.

3. The offence appears to have taken place on 14th of October, 1991 at about 13.45 hours. Complaint of which came to be filed by one Karsanbhai Gandabhai Patel on the same day at 14.30 hours. Accordingly, while complainant was going to Bilimora Rajkamal Guest House, in his car at 13.40 hours, near Bigrina Dhadola Falia, accused Kantu Chhagan Koli Patel, accused Kalidas Haribhai Koli Patel and one more unidentified person were noticed by him. While the car of the complainant was passing near accused Kantu Chhagan Koli Patel and other two persons, accused Kantu Chhagan Koli throw one substance wrapped in a newspaper on the car. The said substance was touched with the back seat of the car, which was dashed with the car, and ultimately it was found that the said substance was bomb. Thereafter, in all, Kalidas Haribhai Koli, Rameshbhai Chhaganbhai Patel present petitioner were arrested and charge sheet was submitted by the Police against them while four accused persons were shown absconded.

4. Learned Advocate Mr. Shethna mainly contended that there is no prima facie evidence at all against the present petitioner so far as his involvement in the said crime is concerned. Even, according to learned counsel Mr.Shethna, neither complainant named present petitioner in his complaint nor he involved present petitioner in his further statement, and on the contrary, in his further statement, he stated that he knew present petitioner Rameshbhai Chhaganbhai Patel and he did not notice him around when the incident took place. The present petitioner is accused No.6 in the said Sessions Case. It was argued that in none of the statements of the witnesses, anything is said against the present petitioner as to saddle him with the liability of the charges levelled against him. It was argued that in these circumstances, the present petitioner is required to be discharged and learned Trial Judge did not consider this issue in proper perspective.

5. On the other hand, learned APP Mr. Pradip D. Bhate, argued that the present petitioner is also charged under Section 120-B of the Indian Penal Code, and there cannot be any direct evidence of conspiracy. It is premature therefore to come to the conclusion that the accused is not involved in the said offence. During trial, there may be evidence against accused to connect him with the crime. It is argued that the Trial Judge rightly observed that while deciding an application under Section 227, the court has not to appreciate the evidence but the court has to find out whether there is any material to proceed against the accused.

6. With the assistance of learned APP Mr. Bhate and Investigation Officer and learned counsel for the petitioner, statements of each witness was scanned through and material produced by the prosecution was also carefully scrutinised. From this exercise, it becomes very clear that except the statement of the co-accused, there is no other prima facie evidence against the present petitioner indicating the involvement of the present petitioner in the said crime. Therefore, from the rival contention, the only point now required to be considered is whether the statements of co-accused before Police involving the other accused is prima facie material to frame a charge under Section 228.

7. While dealing with the application for discharge, the court is required to shift the material produced by the prosecution to come to the conclusion whether there is prima facie material on record to proceed against an accused. If the court comes to the conclusion that after

exercising process of shifting material that there is no iota of evidence against the accused, the court may discharge the accused. The phrase appearing in Section 227 of the Criminal Procedure Code that "there is no sufficient ground for proceeding against the accused" is meaningful and wider. Even if material indicates strong and serious suspicion on the complicity of the accused in the crime, then the Court has to frame the charge. So far as possible, an exercise to be undertaken by the court to assess the material on record with a view to find out that if the facts emerging from the material on record, even if taken at their face value, whether disclose the existence of ingredients of the offence alleged.

7. It clearly appears that there is no prima facie material to proceed against the present petitioner in the above case as to frame charge against him under Section 228. None of the statement of the witnesses nor any material, except the statement of the co-accused, indicate any involvement of the present petitioner in the said crime. It appears that the learned Trial Judge instead of going through the statements of each of the witnesses, swayed away by the seriousness of the incident, and came to the conclusion that, during trial also, evidence could be collected in respect of conspiracy and the involvement of the accused could be decided. The learned Trial Judge also came to the conclusion that the court cannot appreciate the evidence at this stage and when there were statements of the co-accused, there was sufficient evidence for the involvement of the present petitioner in the said crime. Learned Judge also came to the conclusion that whether the statement of co-accused is admissible or not, can be considered at the final stage of the trial and not at the stage of discharge.

8. Undoubtedly, the approach of the Trial Court to the issue is erroneous. In two decisions of this Court, (i) in the matter of DHANRAJ KEVALRAM RAJAI vs. STATE OF GUJARAT (Criminal Misc. Application No. 900 of 2001), decided on 4th of October, 2001 and (2) in the matter of IBRAHIM @ IBU KALUMIYA MANSURI vs. STATE OF GUJARAT, as reported in 2002 (1) GLR 690, this Court took the view that the statement of the co-accused before the Police is no ground for inferring any material for holding that the statement of the co-accused before the police is sufficient ground for proceeding against the other accused. In the matter of Dhanraj Kevalram Rajai, (supra) this Court placed reliance on a decision of the Supreme court in the matter of HARICHARAN KURMI vs.

STATE OF BIHAR, as reported in AIR 1964 SC 1184, wherein the Supreme Court observed that " though the confession may be recorded as evidence in that generic sense because of the provisions of S. 30, the fact remains that it is not evidence as defined by S. 3 of the Act. Therefore, the court cannot start with the confession of a co-accused person, on the contrary, it must begin with other evidence adduced by the prosecution, and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. The Hon'ble Apex Court in para-16 observed as under :

"It has been a recognized principle of the administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused persons is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt."

9. While going through the material thoroughly, it is found that there is no iota of evidence against the accused in the shape of the statement of the witnesses or in the shape of any document indicating involvement of the accused. Further this is not even a case of confession of co-accused but a case wherein only material against the petitioner is a statement of co-accused before Police. The statement of the co-accused before the Police is not an evidence under Section-3 of the Evidence Act. The resultant effect would be, even if the case is taken on its face value, there is no prima facie evidence to proceed against the accused to frame charges against him under Section 228. Even if the accused is charged under Section 120-B of the IPC, and though it may be true that the direct evidence of conspiracy is not

easily available, the accused cannot be saddled with any liability in this respect also only relying upon the material of statements of co-accused. Undoubtedly, the learned Trial Judge was required to undertake this exercise which he failed to undertake and came to the erroneous conclusion. The case of the prosecution may be disclosing prima facie material against the accused in a given case to proceed further and to try him. Therefore, though law does not permit a court to appreciate the evidence to come to the conclusion whether the accused is guilty or not, but the law does permit a court to shift the material for this limited purpose to find out at least whether if the prosecution case is taken on their face value, a charge can be framed against a given accused to commence trial. As aforesaid, the statement of co-accused before the Police is not legal evidence and when there is not even indirect or circumstantial evidence of conspiracy found from the prima facie material available against the petitioenr, it was far-fetching hypothesis for the learned Trial Judge to come to a conclusion that the evidence against the accused could be collected during trial.

10. In the result, this Revision Application is allowed. The order impugned of Additional Sessions Judge, Fast Track Court No.IV, Navsari, delivered on 13th of August, 2004, below an application Exh.1 filed by present petitioner in Sessions Case No. 50 of 1998 is set aside. The Application of the present petitioner Exh.1 for discharge is allowed and the petitioner Rameshbhai Chhanabhai Patel is discharged from the charges levelled against him in Sessions Case No. 50 of 1998. Office is directed to transmit the Record and Proceedings to the Trial Court forthwith.

(J.R. Vora, J.)

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